

JAN 29 1988

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Export trade receivables as qualified export assets under
section 993(b)

This is in response to your letter of October 16, 1987, to Mr. Kim Palmerino of this office dealing with whether export trade receivables held by a financing DISC may be treated as qualified export assets. In the case referred to in your letter an inactive, financing DISC purchases export receivables from its parent/related supplier. The export receivables, which are purchased at a discount, are generated by qualified export sales of the parent where another DISC, which is a member of the same controlled group as the financing DISC, acts as a commission agent for those sales.

Section 993(b)(3) treats accounts receivable or evidences of indebtedness which arise by reason of transactions of such corporation or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation described in subparagraph (A), (B), (C), (D), (G), or (H), of subsection (a)(1) [describing transactions which give rise to qualified export receipts]. Therefore, the purchase of such trade receivables by the financing DISC would result in the DISC owning trade receivables which are qualified export assets.

In addition, there is no abuse where a financing DISC receives only income from the discounting of trade receivables since under regulations §1.994-1(c)(6)(v) the combined taxable income of the DISC and its related supplier is reduced by the amount of the discount.

However, in your conversation with Jack Feldman on November 17, 1987, Mr. Feldman indicated that another issue which was not raised in your letter may apply. This is the application of the incremental rules under former section

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995(e) because one of the reasons that a corporation might have for setting up a dormant DISC is to avoid the incremental rules (which applied from January 1, 1976 to December 31, 1984). To prevent this possibility of avoidance, former section 995(e)(8) sets forth a controlled group rule which is further amplified under regulation §1.995-7(d). Therefore in examining any return in which there is a dormant DISC, the DISC return for the period January 1, 1976 to December 31, 1984, must be carefully examined to ascertain that the rules under former section 995(e)(8) have been complied with.

If there are any further questions, please contact Jack Feldman of this office at FTS 566-6645.